

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1588 of 1999

and

SPECIAL CIVIL APPLICATION No 1590 of 1999

and

SPECIAL CIVIL APPLICATION No 1591 of 1999

and

SPECIAL CIVIL APPLICATION No 1592 of 1999

and

SPECIAL CIVIL APPLICATION No 1593 of 1999

and

SPECIAL CIVIL APPLICATION No 1595 of 1999

and

SPECIAL CIVIL APPLICATION No 1596 of 1999

and

SPECIAL CIVIL APPLICATION No 1598 of 1999

and

SPECIAL CIVIL APPLICATION No 1599 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUSEBHAI JIVANBHAI JIVANI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR DIPAK R DAVE for Petitioner in all these 9

matters

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/04/99

COMMON ORAL JUDGEMENT (per M.R.Calla, J.)

Heard learned Counsel.

2. Through these nine Special Civil Applications, the respective petitioners in each of these petitions have challenged the order dated 31st December 1998 passed by the Land Acquisition Officer (Narmada Scheme), Unit No.19, Surendranagar, whereby the applications made by the present petitioners as claimants seeking reference under Section 18(2) of the Land Acquisition Act, against the award passed by the Land Acquisition Officer, have been rejected.

3. There is no dispute about the fact that the award was passed on 18th July 1995 and it is the case of the petitioners that they were not present before the Land Acquisition Officer on the date when the award was passed. It is the further case of the petitioners that the notices under Section 12(2) of the Land Acquisition Act, 1894 were issued on 3rd December 1996 in each of these matters. These notices had been duly served in the month of December 1996 on the petitioners, but it has been submitted that in the case of Special Civil Applications Nos.1588 of 1999 and 1591 of 1999, these notices under Section 12(2) of the Act had not been served upon the petitioners. The service of the notice dated 3rd December 1996 is admitted in case of all the Special Civil Applications except Special Civil Applications Nos.1588 of 1999 and 1591 of 1999. The learned Counsel for the petitioners has pointed out that in the cyclostyled copy of the affidavit of the petitioner which has been filed at page no.12 of the Special Civil Application No.1588 of 1999 which was tendered along with the application seeking the land reference, it was in fact mentioned that the notice under Section 12(2) had not been served, but in this copy which is annexed with the petition, by mistake the word, "Nathi" appears to have been omitted in the second line of second para, and it has been submitted that since the cyclostyled affidavits are prepared, the correction could not be made. While making reference to Special Civil

Application No.1591 of 1991, the learned Counsel has pointed out that the copy of such cyclostyled affidavit is at page no.12 wherein the word, "nathi" has also been written by way of correction.

4. Be that as it may, in both these petitions also at page no.3 of each of the petitions, it has been mentioned that the notice dated 3rd December 1996 under Section 12(2) had been issued and what can be treated as disputed is that the notice was not received in these two cases by the petitioners.

5. Apart from this, the facts in all these matters are identical and whereas the order has been passed in all these cases on 31.12.1998 rejecting the applications seeking reference, we propose to decide all these petitions by this common judgment and order.

6. As per the pleadings, it is not in dispute in each of these nine matters that, though the notices had been issued on 3rd December 1996, the cases in which the notices had been duly received, no application for obtaining the certified copy had been moved within a period of six weeks from the date of receipt of the notice and the petitioners in each of the seven petitions except Special Civil Applications Nos.1588 of 1999 and 1591 of 1999, failed to move the applications within six weeks from the date of receipt of the notice under Section 12(2). Even with regard to the two Special Civil Applications Nos.1588 of 1999 and 1591 of 1999, we may observe that once the notice under Section 12(2) had been issued, in normal course, the same must have been served upon these petitioners also like the other petitioners. The copies of such notice under Section 12(2) have been annexed with some of the petitions, viz. Special Civil Applications Nos. 1592 of 1999, 1593 of 1999, 1595 of 1999 and 1599 of 1999. These notices which have been annexed with the petitions show that they all were issued on 3rd December 1996 and in all these notices, the date for payment of compensation had also been mentioned as 11th December 1996, along with the place and the time for such disbursement. In these notices, a seal has also been marked informing the respective petitioners that in case they are aggrieved, they may approach the Court within a period of six weeks. In the facts and circumstances of the case, we find that the say of the petitioners in the two petitions, i.e. Special Civil Applications Nos.1588 of 1999 and 1591 of 1999 that they did not receive copy of the notice under Section 12(2) is not believable. Merely because a bald averment to that effect has been made that the notice was not received,

the same cannot be acted upon and cannot be taken to be believable for three reasons. Firstly, even in the copy of the affidavit annexed at page no.12 in each of the petitions, there is no declaration with reference to the knowledge. The petitioners have not stated that the facts stated in the affidavits are true to their personal knowledge. In absence of such declaration, even if it is taken that in the affidavits they had mentioned that the notices under Section 12(2) had not been received, in absence of proper declaration on oath with regard to the personal knowledge, such affidavit cannot be believed more particularly when they themselves admit about the issuance of the notice dated 3rd December 1996. All that has been stated on oath in the declarations is that, "what is stated in para 1, 2, 3 and 5 are true to the best of my own knowledge". While in Special Civil Application No.1588 of 1999 in para 3 thereof, it is not mentioned that such notice was not received, it has been mentioned in para 3 of Special Civil Application No.1591 of 1999, by way of addition in hand, that the notice had not been received by the petitioner. Even if we accept the submission of the learned Counsel that in Special Civil Application No.1588 of 1999 by way of mistake, this correction could not be incorporated, we find that whereas the para no.3 has been sworn in the affidavit in support of the petition, by saying that, 'it is true to the best of my own knowledge', such averment cannot be acted upon and we find that the swearing in of any fact in an affidavit by saying that, 'it is true to the best of my own knowledge', is no affidavit in eye of law, in support of the factual averments. In case of an affidavit, what is required to be declared is the source of knowledge, whether it is personal knowledge or knowledge, by information based on record or on the basis of the legal advice etc. but to say that 'it is true to the best of own knowledge', is no affidavit and in accordance with the provisions of Order 19 Rule 3 of the Code of Civil Procedure, such an affidavit does not inspire any confidence so as to act upon the same. The petition under Article 226 of the Constitution of India is supposed to be supported by a proper affidavit and in absence of proper affidavit to that effect, the averments cannot be taken correct on their face value. Keeping in view the totality of the facts of these cases as we have narrated hereinabove, it is not believable that the notices had not been received in case of these two petitions.

7. Now, once we find that the notices had been issued on 3rd December 1996 and as it is admitted in other cases except the above two cases that the notice

was served also in the month of December 1996 itself and it is also an admitted position that no application for obtaining the certified copy of the award had been made within the period of six weeks from the date of receipt of this notice.

8. According to the plain reading of Section 18(2) proviso (b), the application seeking reference has to be made within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire, in cases where the claimants were not present at the time when the award was passed. Whereas it is the case of the petitioners that they were not present at the time when the award was passed, the period of limitation for making an application seeking reference has to be considered in accordance with proviso (b) of Section 18(2) as referred to hereinabove. Section 18 is reproduced as under:

"18. Reference to Court.--(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2)

Provided that every such application shall be made,--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever shall first expire.

Accordingly, under proviso (b) to Section 18(2), in the instant case, when the notices under Section 12(2) had been issued, the application seeking reference should

have been made within a period of six weeks from the date of receipt of the notice. It is the case of the petitioners themselves that while the notices dated 3rd December 1996, under Section 12(2) had been received on 26th December 1996, the application for certified copy was applied for on 25th February 1997 and such copies were delivered within a week's time, i.e. 4th March 1997 and yet, the applications seeking reference were made on 17th March 1997. It is, therefore, very clear that the applications were not made within a period of six weeks from the date of receipt of the notice under Section 12(2) of the Land Acquisition Act and, therefore, it cannot be said that the Land Acquisition Officer has wrongly rejected the applications seeking reference on the ground of limitation. It is very clear from the facts of this case and the resume of the dates as above that six weeks' period had expired on 6th February 1997 and it is rather strange that even the certified copy was applied for after expiry of the six weeks' as late as on 25th February 1997 inasmuch as it is admitted before us that the certified copy was applied on 25th February 1997. In such a fact-situation, there is no dispute about the expiry of six weeks' period from the date of receipt of the notice under Section 12(2) on 6th February 1997 and whereas the applications seeking reference were moved on 17th March 1997, the Land Acquisition Officer rightly found that the applications were time-barred.

9. Faced with this fact-situation, the learned Counsel for the petitioners cited a decision of the Division Bench of this Court in the case of K.N. Mehta v. State of Gujarat, reported in 1998(1) GLH 634. A pointed reference was made by the learned Counsel to the observations made in para 6 of this judgment. We find that in the case of K.N.Mehta (supra), the claimant had remained present before the Land Acquisition Officer on 18th September 1991 when he was told that the award will be declared later on. On the next day, i.e. 19th September 1991, when he remained present, he was informed that the award had already been passed. He immediately applied for the certified copy of the award, which was received by him on 26th February 1992 and the application seeking reference was moved in March 1992, but the same was rejected on the ground of limitation. It is not discernible from this judgment that any notice under Section 12(2) as such had been given to the claimant. However, even if we take it on the basis of the observations made in para 6 that the Court had considered with reference to the scope of Section 12(2), we find that all that has been said in para 6 is that,

"..... there can be no valid notice under sub-section (2) of Section 12 until the essential contents of the award were brought home to the parties affected by actually communicating the award. When the aggrieved party applies for copy of the award and the said copy is supplied to him, obviously with the stipulated period, he can file an application and such application cannot be rejected on the ground of limitation."

10. If we apply the aforesaid ratio, it would mean that the notice under Section 12(2) must be a self-contained notice so as to mention the essential contents of the award. In the instant case, the copy of the notice under Section 12(2) dated 3rd December 1996 which has been placed on record in Special Civil Application No.1592 of 1999, 1593 of 1999, 1595 of 1999, and 1599 of 1999, (while copies of such notice under Section 12(2) have not been placed on record in Special Civil Applications Nos. 1588 of 1999, 1590 of 1999, 1591 of 1999, 1596 of 1999 and 1598 of 1999), show that the notices contained all the details about the Survey Number, Block Number of the land in question, nature of the land, area of the land, the rate per Ha at which the compensation was granted, the total amount of compensation of the acquired land, 30% solatium, 12% additional solatium, the total price, the amount of compensation paid in advance, the amount which remained to be paid and the net amount which remained to be paid. Besides these details, the date of the award had been mentioned, number of the case has been mentioned on the top of the notice, it also contained the name and address of the concerned claimant and at the bottom, the date, time and place fixed for payment of the compensation along with rubber stamp marked on the notices that in case the claimant is aggrieved against the award, he may approach for the relief from the Court within a period of six weeks from the date of receipt of the notice. We, therefore, find that the notices under Section 12(2) which were issued in these cases and which were received by the petitioners did contain the full details on the basis of which they could apply for the copy of the award and they were also made known the result of the award, the rate at which the compensation was awarded. These details, in our opinion, constitute the essential contents of the award for the purpose of seeking reference under Section 18 of the Land Acquisition Act and it cannot be said that in the facts and circumstances of the case, the notice under Section 12(2) did not contain the essential contents. The learned Counsel for the petitioners also placed reliance on a Division Bench

decision of this Court in the case of Rajat Hirabhai Motibhai & ors. v. Deputy Collector, Land Acquisition & Rehabilitation and ors., reported in 1985 (1) GLR 275. In this case also, the Court had taken the view that there is an obligation on the part of the Collector not merely to intimate about the passing of the award, but he has to communicate the essential contents of the award, if not a copy of the award. In both these cases as above, decided by this Court, the decision of the Supreme Court in the case of State of Punjab v. Quaisar Jehan Begum and anr., reported in AIR 1963 SC 1604 was considered and the observations made therein were relied upon. In the case of State of Punjab v. Quaisar Jehan Begum and anr. (supra) also, the Supreme Court has observed that the knowledge of the award must mean knowledge of the essential contents of the award. Knowledge of award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly, when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. In this case, the Supreme Court found that having regard to the scheme of the Act, the knowledge of the award must mean knowledge of the essential contents of the award. We, therefore, find that the notices under Section 12(2) of the Act were issued and served in these cases, which contained such essential contents so as to apprise the concerned claimants constructively about the award and so as to enable them with such details on the basis of which they could immediately obtain copy of the award and also could move an application seeking reference under Section 18 of the Act and there is no material to hold that the notices issued and served under Section 12(2) in the facts of the present cases were defective in any manner or that they cannot be said to be effective notices or that such notices were lacking the essential contents and that the contents of the award were not made known to the concerned claimants constructively. We cannot read anything beyond what can be reasonable and be reasonably construed on the basis of the correct interpretation of proviso (b) to Section 18(2) wherein the words used are, 'notice from the Collector under Section 12(2)'. Whereas the notice under Section 12(2) has been interpreted to mean a notice containing such essential contents so as to apprise the concerned claimants constructively about the

contents of the award, that is sufficient compliance of the requirements of the notice under Section 12(2). To read beyond it would tantamount to insert or add such words in the proviso (b) which the Legislature neither included nor intended. Had the Legislature intended that copy of the award itself must be sent, it would have been mentioned in the proviso (b) itself that the notice under Section 12(2) would mean a notice with the copy of the award and these words are conspicuously missing in the language of Section 12(2) also. Section 12(2) does not mention about the enclosing of the copy of the award with the notice under Section 12(2). Section 12(2) is reproduced as under:

"12. Award of the Collector when to be final.--

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

Accordingly, the Collector has to give immediate notice of the award to such of persons interested as are not present personally or by their representatives when the award is made. It has of course been interpreted that such notice would mean a notice containing the essential contents of the award as has been discussed above. In this view of the matter, we find that Section 12(2) has been complied with in accordance with law and it cannot be said that it is a case in which the opportunity to which the petitioners claimants were entitled, has been denied or truncated or reduced to any extent.

11. Besides this, the Supreme Court has considered the relative scope of Sections 12(2) and 18 of the Act, in the case of State of Punjab and anr. v. Satinder Bir Singh, reported in (1995) 3 SCC 330 and it has been held that there is no particular form prescribed for the notice under Section 12(2). The non-mention of all the details of the award including the manner of determination of the compensation does not render the notice to be invalid, the limitation for filing application for reference would begin to run from the

moment the notice under Section 12(2) is received as envisaged under Section 18(2), the statutory operation of the limitation does not depend on the ministerial act of communication of the notice in a particular form. It is, therefore, clear that it is not at all necessary that the notice should contain all the details of the award including the consideration and the manner of determination of the compensation.

12. The upshot of the aforesaid discussion is that, all these nine Special Civil Applications have no merit and the same are hereby dismissed in limine. No order as to costs.

sreeram.